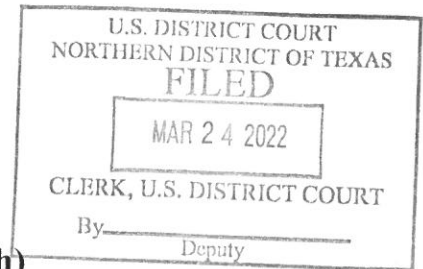


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UNITED STATES DISTRICT COURT
Northern District of Texas (Fort Worth)



SEAN ALEXANDER HARRIS,

Plaintiff(s),

vs.

UNITED STATES OF AMERICA,

Defendant(s).

) Case Number: **4:20-cr-00305-O-1**

)
)
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PETITIONER'S TITLE 28 USC Section
) 2255 PETITION
)
)
)

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner and respectfully submits this Memorandum of Points and Authorities in Support of his Title 28 U.S.C. Section 2255 Petition. Petitioner's Title 28 U.S.C. Section 2255 Petition is timely filed.

GROUNDWORK FOR RELIEF

GROUND ONE: COUNSEL'S INEFFECTIVE ASSISTANCE OF COUNSEL DURING
THE PLEA PHASE, PRETRIAL, AND SENTENCING PHASE.....4

GROUND ~~FOUR~~: COUNSEL'S INEFFECTIVE ASSISTANCE RENDERS VOIDS
HARRIS'S GUILTY PLEA BECAUSE IT WAS ENTERED
UNKNOWNINGLY, UNINTELLIGENTLY,
AND INVOLUTARILY.....4

GROUND THREE: COUNSEL WAS INEFFECTIVE FOR HIS DEFECTIVE
ADVICE AND INTENTIONAL INACCURATE AND
MISLEADING OF FACTS.....5

GROUND FIVE: COUNSEL WAS INEFFECTIVE FOR HIS LACK
OF CONSULTTATION.....6

PREAMBLE
(Facts adopted in part, not in full)

GROUND FOR RELIEF

The right to effective assistance of counsel is found in the Sixth Amendment to the United States Constitution. The Sixth Amendment states that “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence.” U.S. Const. Amend. VI. This right was comprehensively discussed in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

In *Strickland*, supra, the Supreme Court set forth the two-prong test for establishing ineffective assistance of counsel. To prevail on an ineffective assistance of counsel claim, a convicted defendant must show: (1) that counsel’s representation fell below an objective standard of reasonableness, and (2) that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *Strickland*, at 687 – 88. There is a strong presumption that counsel’s conduct falls within the wide range of reasonable assistance. *Strickland*, at 689 – 90.

Moreover, the Constitutional guarantee of counsel under the Sixth Amendment has been construed to include four rights: The right to counsel, the right to effective assistance of counsel, the right to a preparation period sufficient to ensure minimal level of quality of counsel, and the right to be represented by counsel of one’s own choice.

After a defendant’s Sixth Amendment right to counsel attaches, he has a right to the advice of counsel at any stage of the prosecution, formal or informal, in court or out, where counsel’s absence might derogate from the accused’s right to a fair trial. *United States v. Wade*, 388 U.S. 218 (1967).

1 GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PLEA
2 PHASE, PRETRIAL, AND SENTENCING PHASE

3 Petitioner submits that Counsel was ineffective during the plea phase,
4 pretrial and sentencing phase because Counsel failed to investigate, apprise
5 Petitioner of the facts, omitted and misleded Petitioner with vital case
6 information, demonstrated half-heartedness performance, failed to explain the
7 information contained in the PSR and any Objections, failed to inform Petitioner of
8 any plea negotiation attempts, failed to properly present Petitioner with the plea
9 document, failed to adequately consult with Petitioner. Had Counsel apprised,
10 properly informed, not misleded or deceived Petitioner, engaged in plea
11 negotiations, investigated the facts, and challenged self-serving statements used
12 against Petitioner, Petitioner would not have entered a plea of guilty and in its
13 stead proceeded to trial or sought the most favorable plea offer.

14 GROUND TWO: COUNSEL'S INEFFECTIVE ASSISTANCE RENDERS VOIDS
15 HARRIS'S GUILTY PLEA BECAUSE IT WAS ENTERED
16 UNKNOWNINGLY, UNINTELLIGENTLY, AND INVOLUTARILY

17 Petitioner submits that his Guilty plea was unconstitutionally entered
18 rendering null and void because it was entered unknowingly, unintelligently, and
19 involuntarily due to Counsel's misleading, inaccurate, deceptive, and omitted set
20 of facts and advice. The PSR was not explained, the elements to the charges, the
21 Sentencing Guidelines and Petitioner's Level on the U.S.S.G. Counsel exhibited his
22 desire to a speedy disposition of Petitioner's case. Had Counsel apprised, properly
23 informed, not misleded or deceived Petitioner, engaged in plea negotiations,
24 investigated the facts, and challenged self-serving statements used against
25 Petitioner, Petitioner would not have entered a plea of guilty and in its stead
26 proceeded to trial or sought the most favorable plea offer.

27 In order for a guilty plea to be valid, the Constitution imposes "the minimum
28 requirement that [the] plea be the voluntary expression of [the defendant's] own

1 choice." Brady, 397 U.S. at 748. Because it operates as a waiver of important
2 constitutional rights, the plea must also be entered "knowingly, and intelligently,
3 'with sufficient awareness of the relevant circumstances and likely
4 consequences.'" Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005) (quoting Brady, 397
5 U.S. at 748). It must reflect "a voluntary and intelligent choice among the
6 alternative courses of action open to the defendant." North Carolina v. Alford, 400
7 U.S. 25, 31 (1970). In evaluating the constitutional validity of a guilty plea, "courts
8 look to the totality of the circumstances surrounding [it], granting the defendant's
9 solemn declaration of guilt a presumption of truthfulness." Walton v. Angelone,
10 321 F.3d 442, 462 (4th Cir. 2003) (internal citation omitted).

11 Petitioner submits that numerous cases make it perfectly clear that
12 a guilty plea based on such misinformation is constitutionally invalid. Smith v.
13 O'Grady, 312 U. S. 329, 334 (1941); Henderson v. Morgan, 426 U. ...S. 780 (1979),
14 actually supports the contrary proposition: that a
15 constitutionally invalid guilty plea may be set aside on collateral attack whether or
16 not it was challenged on appeal.

17
18 **GROUND THREE: COUNSEL WAS INEFFECTIVE FOR HIS DEFECTIVE ADVICE**
19 **AND INTENTIONAL INACCURATE AND**
20 **MISLEADING OF FACTS**

21 Petitioner submits that Counsel was ineffective for his defective advice
22 intentional inaccurate and misleading of advice and facts to Petitioner. Further
23 failed to explain the substance of the PSR.

24 * Please See Memorandum of Points and Authorities and Affidavit Attached
25 herein.

26 Had Counsel apprised, properly informed, not misled or deceived
27 Petitioner, engaged in plea negotiations, investigated the facts, and challenged
28 self-serving statements used against Petitioner, Petitioner would not have entered

1 a plea of guilty and in its stead proceeded to trial or sought the most favorable plea
2 offer.

3
4 **GROUND FOUR: THE SENTENCING DISPARITY BETWEEN**
5 **CODEFENDANTS VIOLATED PETITIONER'S DUE**
6 **PROCESS RIGHTS AND COUNSEL'S WAS INEFFECTIVE**
7 **FOR HIS FAILURE TO OBJECT, CHALLENGE, PRESERVE**
8 **FOR APPEAL AND APPEAL**

9 The Sentencing Disparity violates Petitioner's Due Process rights and
10 Counsel was ineffective for his failure to Object, Challenge, Preserve for Appeal and
11 Appeal. See, United States v. Booker, 125 S.Ct. 738 (2005) and Blakely v.
12 Washington, .124 S.Ct. 2531 (2004).

13
14 **GROUND FIVE: COUNSEL WAS INEFFECTIVE FOR HIS LACK**
15 **OF CONSULTATION**

16 Petitioner submits that Counsel was ineffective for his lack of consultation.
17 During the pretrial and sentencing phase, counsel failed to explain the elements,
18 failed to explain the Sentencing Guidelines, failed to show Petitioner the PSR and
19 explain the substance of the PSR, and failed to explain and show the evidence to
20 Petitioner. During visits, Counsel simply indicated to plead. The lack of
21 consultation might well support a finding of ineffective assistance of counsel
22 [United States exrel. Washington v. Maroney, 428 F.2d 10 (3d Cir. 1970)], but the
23 amount of time counsel spends with the defendant is only one factor to be weighed
24 in determining the effectiveness of representation. O'Neal v. Smith, 431 F.2d
25 646(5th Cir. 1970); Brinegar v. United States, 290 F.2d 656 (6th Cir. 1961).

26 Had Counsel adequately consulted with Petitioner, the proceedings would
27 have been different, and Petitioner would have not ended with a lengthy sentence.
28

AN EVIDENTIARY HEARING IS NECESSARY AND WOULD
BE USEFUL TO THE COURT

Title 28, United States Code Section 2255 provides that a prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released or for reduction of sentence may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

This section also provides as follows:

“Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.”

28 U.S.C. Section 2255

In the instant case, as set forth in Petitioner’s Section 2255 Petition and Affidavits, Petitioner has pleaded, presented evidence, and argued to demonstrate that his conviction and sentence is violative of his Sixth Amendment right to effective assistance of counsel during the plea negotiation phase.

While many of the material allegations concern events which took place outside the courtroom and are not, therefore, part of the “files and records,” these allegations require an evidentiary hearing under well settled law. *Stoia v. United States*, 24 F.3d 766, 768 (7th Cir. 1994); *Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994) (same); *Nichols v. United States*, 75 F.3d 1137, 1145-46 (7th Cir. 1996)(petitioner entitled to evidentiary hearing on claim of ineffective assistance of counsel when record inconclusive on issue); *United States v. Witherspoon*, 231 F.3d 923; 2000 U.S. App. LEXIS 27778 (4th Cir. 11-6-00)(petitioner entitled to evidentiary hearing when motion presented colorable claim and unclear whether counter affidavit disputed defendant’s allegations).

Here, Petitioner induced by Counsel to sign a plea agreement and enter a plea of guilty. Petitioner argues that his conviction and sentence are violative of his Sixth Amendment right to effective assistance of counsel because “any amount of jail time has a Sixth Amendment significance.” *Glover v. United States*, 531 U.S. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001).

RELIEF REQUESTED

For the above-named reasons, Petitioner prays that this Court:

- i. Issue a writ of habeas corpus to have Petitioner brought before the Court to the end that he may be discharged from this unconstitutional conviction;
- ii. Require Respondent to bring forth and file with this Court accurate and complete copies of all documents and proceedings relating to Petitioner's conviction and sentence;
- iii. Permit Petitioner to amend this Petition to include any additional claims or allegations not presently known to him, that are identified or uncovered in the course of review, discovery, investigation, and litigation of this habeas corpus Petition;
- iv. Require Respondent to file an answer in the form prescribed by the Rules Governing § 2255 proceedings, admitting or denying each and every factual allegation set forth in this Petition;
- v. Permit Petitioner to conduct and utilize the procedures for discovery under Rule 6 of the Rules Governing § 2255 proceedings and Fed.R.Civ.P. 26 – 37, to the extent necessary to fully develop and identify the facts supporting this Petition, and any defenses thereto raised by Respondent's Answer;
- vi. Conduct an evidentiary hearing to resolve any factual disputes in relation to the claims in this Petition, by Respondent's Answer to this Petition, or by Petitioner's Response to any affirmative defenses raised in Respondent's Answer;
- vii. Issue a writ of habeas corpus Granting new proceedings to cure all constitutional defects in the federal proceedings that resulted in Petitioner's Federal conviction;
- viii. Issue an Order appointing Counsel for Petitioner for this habeas corpus proceeding; and
- ix. Grant such other and further relief as may be deemed just and proper.

VERIFICATION

I, the Petitioner, state as follows:

- a) I am a pro se pauper in federal custody; and
- b) Based on my first-rate personal knowledge, and a review of the limited record, I know all the facts described in this Petition and verify them as true.

I declare under penalty of perjury pursuant to Title 28 U.S.C. 1746, and under the laws of this State that the foregoing is true and correct to the best of my ability.

Dated this 7th day of March, 2022.

Signature Name: Sean Harris

Sean Alexander Harris
Reg. No. 11537-509

CONCLUSION

WHEREFORE, for the reasons stated above, Petitioner prays this honorable Court Grant Petitioner the relief he seeks.

Dated this March 7th, 2022.

Sign Name: Sean Harris

Sean Alexander Harris
Reg. No. 11537-509
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TEXARKANA, TX 75505

CERTIFICATE OF SERVICE

I, Petitioner, hereby, certifies and declares that on March 7th, 2022, I mailed the original of the following: 1) Title 28 U.S.C. Section 2255 Petition; 2) DECLARATION OF SEAN HARRIS IN SUPPORT OF PETITIONER'S TITLE 28 USC Section 2255 PETITION; and 3) Memorandum of Points and Authorities in Support of Title 28 U.S.C. Section 2255 Petition.

Which is deemed filed at the time it was delivered to prison legal mail authorities for forwarding, Houston v. Lack, 101 L. Ed. 2d 245 (1998), upon the below mentioned, by placing same in sealed, postage prepaid envelope addressed to:

United States District Court
406 U.S. Courthouse
501 West 10th Street
Fort Worth TX 76102-3639

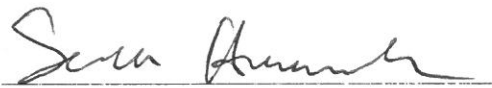
And deposited same in the United States Legal Mail System at the:

FCI TEXARKANA
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 7000
TEXARKANA, TX 75505

I declare under penalty of perjury pursuant to Title 28 U.S.C. 1746, and under the laws of this State that the foregoing is true and correct to the best of my ability.

March 7th 2022.

Sign Name: _____



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